

115 CMR 4.00: RECORDS

Section

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4.01: Enabling Authority

The Department is authorized by M.G.L. c. 123B, §§ 2 and 17, to promulgate regulations governing the creation, maintenance, destruction of, and access to, records concerning the admission, treatment and periodic review of persons served by any provider under its supervision.

4.02: Scope

115 CMR 4.00 governs the creation, maintenance and destruction of, and access to, records relating to services and supports provided, purchased or arranged for individuals by the Department and shall apply to all programs and services or supports which are operated, licensed, certified, or contracted by the Department. 115 CMR 4.00 applies to all providers, including facilities and intermediate care facilities for the mentally retarded (ICF's/MR), and to all individual records kept by the Department's area offices, unless greater or more limited scope is specified at 115 CMR 4.04. 115 CMR 4.00 supplements other requirements of the Department's regulations which involve records.

4.03: Individual Records

(1) Purpose. The purposes of 115 CMR 4.03 are to set forth requirements of record keeping to ensure:

- (a) Sufficient information to promote coordination and continuity of services and supports;
- (b) Sufficient specificity to provide a basis for accountability in the provision of services and supports;
- (c) Sufficient flexibility to be no more intrusive to the individual or cumbersome to the provider than is necessary to meet the legitimate service needs of the individual and the documentation needs of the Department; and
- (d) Sufficient uniformity in records (organization and types of data collected) to serve as the basis for Departmental service and program planning.

(2) General Requirements.

- (a) Individual records shall be legible and all entries shall be dated. All entries to individual records by any providers subject to 115 CMR 4.00 shall be signed.
- (b) Individual records shall contain information which is accurate, complete, timely, and relevant to the individual's needs for services or supports.
- (c) Individual records shall be written in standard English, with second language translation (or availability of interpretive services) where necessary for the individual. Abbreviations, symbols, and professional jargon should be avoided in order to promote the understanding of the record by a lay person. If abbreviations and symbols or jargon are used, a key shall be provided.
- (d) Except where specifically stated to the contrary in 115 CMR 4.03 or elsewhere in 115 CMR, providers may meet the requirements of 115 CMR 4.03 through the use of forms or record formats meeting the requirements of 115 CMR 4.00.

(3) Identifying Information.

- (a) Individual records maintained by providers (including facilities) and area offices shall maintain the following information in written form at a location accessible to service coordinators or provider staff:

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1. The individual's full name;
2. The individual's social security number;
3. Religion or religious preference, if any, and only if disclosure is volunteered by the individual, family or guardian;
4. Language(s) of the individual and family or guardian, if other than English;
5. Summary of health insurance, financial support and other entitlements;
6. Identification of family, guardian, conservator, and other interested persons, including current addresses and telephone numbers;
7. Legal competency, including:
  - a. Current legal status;
  - b. Type of guardianship, if any;
  - c. Date and court of adjudication, if applicable;
  - d. Person(s) requesting adjudication;
  - e. Date of and reason for request;
  - f. A statement about the individual's capability in fact to give informed consent;
8. All providers of services or supports, both currently and during the past two years;
9. Employment history, including list of employers, dates of employment, and position(s) held;
10. For individuals receiving residential services, capacity for evacuation, including:
  - a. Assessment and Individual Safety Plan;
  - b. Cause of failure, if applicable;
  - c. Basis for determination;
  - d. Date(s) of determination and redetermination;
11. Such other information as may be required by the Department consistent with the scope and purpose of 115 CMR 4.03.

(4) Emergency Information. Each individual's area office and provider record shall contain, in readily accessible and duplicable form, descriptive and other information of use in finding an individual if missing, or otherwise in an emergency, as more fully set forth in 115 CMR 4.03(4)(a) through (n):

- (a) A photograph taken after the age of 18 years but taken within the last five years and after any significant change in the appearance of the individual;
- (b) Name (and nicknames, if any);
- (c) Age;
- (d) General physical characteristics, including gender, weight, height, build, hair and eye color, and any identifying marks or distinguishing items (for example, hearing aids, eye glasses);
- (e) The name(s) and telephone number(s) of a friend or relative to be contacted in the event of an emergency;
- (f) If the individual has a legal guardian, the name and telephone number of the guardian; and
- (g) Information concerning the individual's health insurance (including Medicaid) status and the name of a person to be contacted with respect to the individual's medical status and needs.
- (h) General nature of abilities and physical handicaps;
- (i) Special medical problems, including allergies and medication needs;
- (j) Pattern of movement, if missing previously;
- (k) Personal characteristics and likely response to search efforts (such as tendency to hide);
- (l) Name, telephone number, and addresses of family members, past residences, work, school, or daytime whereabouts, and places frequented;
- (m) Name, telephone number, and address of the individual's treating physician(s); and
- (n) Name and telephone number of individual's service coordinator and the designated contact person for each provider serving the individual.

(5) Assessments. Each individual's area office and provider record shall contain current assessment reports and reports of the individual's current level of functioning, as they pertain to the services of the provider. When assessments are being completed by an outside agency or by referral, the name of the agency or consultant referral should be documented.

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(6) Individual Service Plan. (115 CMR 4.03(6) through (9) Reserved.)

(10) Medical Information. Each individual's area office and provider record shall contain the following information:

- (a) Summary reports of the individual's most recent physical and dental examinations, as required in 115 CMR 6.51, except that only the area office and the individual's residential provider shall be required to maintain the medical and dental examination summary report;
- (b) A record of special diets prescribed for the individual, if any, upon recommendation of a physician;
- (c) Upon recommendation of a physician, a record of frequency and type of all seizures, in order to assess the effects of anti-convulsant medication, other therapies, and environmental factors;
- (d) A list of any conditions requiring ongoing management by health care professionals, including a summary of necessary treatment(s) for each condition;
- (e) Any information concerning the individual's HIV status shall be maintained confidentially and strictly in accordance with the written policy of the Department.

(11) Incident Reporting. Each individual's area office and provider record shall contain documentation of incidents in accordance with the requirements set forth in 115 CMR 5.00.

(12) Restraints. Each individual's area office and provider record shall contain documentation concerning any utilization of mechanical, chemical, or physical restraints, and of any limitation of movement specifically exempted from the definition of emergency restraint at 115 CMR 2.00, in accordance with the documentation requirements of 115 CMR 5.00.

(13) Behavior Modification Plans. Each individual's area office and provider record shall contain documentation concerning any behavior modification plans developed for the individual pursuant to 115 CMR 5.10, in accordance with the documentation requirements of 115 CMR 5.10.

(14) Referral/Transfer Information. Upon an individual's referral or transfer, the individual's area office and provider record shall contain a statement explaining the purpose of the referral or transfer.

(15) Access to and Transmission of Records. Each individual's area office and provider record shall contain a listing of all record accesses and transmissions, in accordance with the consent and documentation requirements for record access and release contained in 115 CMR 4.05.

4.04: Additional Requirements Applicable to Some Record Holders

(1) Area offices and facilities. In addition to the requirements for individual records listed in 115 CMR 4.03, which apply to all providers and area offices holding individual records, individual records maintained by area offices and facilities shall contain the following information:

- (a) Date found eligible for DMR services;
- (b) Address of the individual at the time of entry into Department service system and current address and phone number;
- (c) DMR area of service;
- (d) Historical information on past service providers; and
- (e) Status as a class member under mental retardation consent decrees of the United States District Court for the District of Massachusetts.

(2) Providers Only. In addition to the requirements for individual records listed in 115 CMR 4.03, which apply to all providers and area offices holding individual records, individual records maintained by providers (including facilities) shall contain the following information:

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- (a) Progress Notes. Each individual's provider record shall contain notations on at least a quarterly basis, as follows:
  - 1. Observation of the individual's progress toward each goal, outcome, and objective;
  - 2. Observations of any events pertinent to the individual's growth and development, including but not limited to behavioral incidents and significant activities and events;
  - 3. Notations shall be behavioral and measurable as appropriate, and shall include the individual's level of participation and interest in and response to the services and supports offered by the provider;
- (b) Medication. Each individual's provider record shall also contain the documentation required by 115 CMR 5.06 relating to medication;
- (c) Immunizations and tests. A record of the individual's past and current immunizations and tuberculin tests, as well as a record of the individual's receipt of age-appropriate screening tests (for example, mammograms, cholesterol levels) as made available by the area office, except that this requirement shall apply to the individual's residential provider only;
- (d) Financial Transactions. Each individual's residential provider record shall contain a record of the financial transactions of the individual with the provider, including delegated responsibility for the management of individual funds, in accordance with the requirements of 115 CMR 5.00.
- (e) Human Rights Training. Every residential, day, or site-based-respite provider record, and every specialized home care placement agency provider record shall contain confirmation of the individual's annual training by the human rights officer in the exercise of his or her human rights.

4.05: Confidentiality of Records

- (1) Authority. The Department is required by M.G.L. c. 123B, § 17, to keep records regarding all persons served by facilities and other providers under its supervision. Such records are private, but may be disclosed under the circumstances specified by that statute, including when disclosure is in the best interest of the individual who is the subject of the records, in accordance with the Department's regulations. 115 CMR 4.05 and 4.06 are promulgated pursuant to this authority.
- (2) Requests for Records; Procedures.
  - (a) Requests for copies of the record of an individual, to inspect such record, and for information concerning any individual shall be sent to the appropriate designee of the Commissioner with custody of the record.
  - (b) If such request is denied by such designee, the decision may be reviewed by the appropriate Department official as designated by the Commissioner. The decision of the Department official designated by the Commissioner is subject to further review by the Commissioner whose determination shall be final.
- (3) Confidentiality of Record; Exceptions. All records relating to any persons admitted to or served by a provider operated, licensed, certified, or contracted by the Department shall be private and not open to public inspection except as provided in 115 CMR 4.06.

4.06: Access to Records and Record Privacy

- (1) Access or Inspection by the Individual, Guardian, or Representative.
  - (a) The individual, guardian, designated representative, or other legally authorized representative shall be permitted to inspect and copy the individual's records upon request. Legally authorized representatives shall be permitted to inspect and copy on request only those records relevant to those matters within their authority.
  - (b) When necessary for the understanding of the individual, guardian, or representative, the staff shall read or interpret the record.
- (2) Inspection by other Persons. Records of an individual shall be private and not open to inspection by third parties, other than those in 115 CMR 4.06(1)), except as provided in 115 CMR 4.06(2).

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- (a) Records shall be open to inspection by a third party upon informed consent by the individual or guardian:
  - 1. Before consent is obtained, the individual or guardian shall be afforded an opportunity to examine the records to be released, and shall be provided with the name of the recipient, possible uses of the information, and possible risks and benefits of, and alternatives to disclosure.
  - 2. A record of such authorization shall be included in the individual's record.
- (b) Records of an individual shall be open to inspection upon proper judicial order. For the purpose of 115 CMR 4.06(2)(b), the term "proper judicial order" shall mean an order signed by a justice or special justice of a court of competent jurisdiction.
- (c) The head of the provider or a designee shall provide access to an individual's record by:
  - 1. Provider staff, as necessary and appropriate, including the human rights officer and associated professional consultants providing habilitation services and supports to the individual;
  - 2. Persons authorized by the Department to monitor the quality of services and supports offered to the individual, including the human rights committee;
  - 3. Persons approved by the Department and authorized under Department regulations to engage in research;
  - 4. Agencies which require specified information as a prerequisite for third party reimbursement of essential service;
  - 5. Department investigators appointed to conduct an investigation pursuant to 115 CMR 9.00 or M.G.L. c. 19C;
  - 6. Agencies or attorneys who are authorized by statute, by court decision, or by the Department to represent, advocate for, or protect the legal rights of the individual.
- (d) Where the individual is legally competent, but not capable in fact of making a knowing decision concerning the release of records, the head of the provider or a designee may authorize, where necessary and appropriate, inspection of records by persons likely to further the habilitation of the individual, including:
  - 1. Staff of providers proposed to provide habilitation services to the individual in the near future;
  - 2. Insurers, trustees, and other persons through whom financial or legal assistance is or may be available.
- (e) The head of the provider or a designee may make records available, as necessary and appropriate, to a physician who requests such records in the treatment of a medical emergency; provided, however, that the individual and any guardian are given notice of the access as soon as possible.
- (f) The provisions of 115 CMR 4.06(2)(a) through (e) notwithstanding, the Commissioner or the Commissioner's written designee may authorize access to individual records when deemed in the best interest of an individual or individuals served by the Department.
- (g) The Commissioner may authorize access to individual records by attorneys representing the Department when necessary to the defense of specific legal claims brought by, concerning, or on behalf of the individual against the Commonwealth, the Department, or its agents or employees.

(3) Restrictions on Scope of Access. Where the head of the provider or a designee authorizes release of the records, every precaution shall be taken to protect the confidentiality of the individual.

- (a) The head of the provider or a designee shall, wherever possible, set reasonable restrictions on access to a person's records by ascertaining from the area office director the persons who may inspect the record and the permitted uses to be made of the record, specifying the duration of time that the record may be held, and setting any other restrictions that will serve to protect the confidentiality of the record.
- (b) Only those records which are necessary to meet the legitimate purposes of the requesting person(s) shall be released, and, whenever possible, the name or personal identifying information of the individual shall be withheld.

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(c) A listing shall be kept of every person or organization, other than those identified in 115 CMR 4.06(1) and 4.06(2)(c)1., given access to the individual's records, the uses to be made of that information, a brief description of the information which has been released, and the person authorizing access. A list of such accesses shall be made available to the individual, guardian, designated representative, legally authorized representative, and the human rights committee, upon request.

(d) The individual, guardian, designated representative, or legally authorized representative of the individual may challenge a decision to permit access to a record by filing a complaint with the head of the provider in accordance with the Department's regulations on investigations, 115 CMR 9.00. The provider shall promptly send a copy of this complaint to the human rights committee. Once a complaint is filed to challenge access to a record, no records which are the subject of the complaint shall be further disclosed to the person(s) or organization(s) involved until the complaint is resolved.

(e) An individual or guardian shall be informed of a subpoena or court order commanding production of an individual's records in a court or agency proceeding, and of the individual's right to request the court to quash or modify the subpoena or order on the grounds that it is unreasonable or oppressive, or on any other grounds permitted by law.

(4) Accuracy of Information. The record maintained by the provider and area office shall contain accurate, complete, timely, and relevant information, consistent with the requirements of 115 CMR 4.03.

(a) If an individual or guardian believes that the record contains inaccurate or misleading information, or objects to the collection of information or its use, he or she may file a complaint with the head of the provider. If the individual or guardian seeks to challenge the decision made at this level, or if the complaint concerns information contained in the records at the office of the case management team, a complaint may be filed with the Department. A copy of this complaint shall be sent promptly to the human rights committee.

(b) If an individual or guardian believes that the record contains inaccurate or misleading information, he or she may prepare a statement of disagreement, with assistance if requested, which shall be entered into the record.

(5) Disclosure of Existence of Record. The provider shall inform an individual, guardian, or designated or legal representative, upon request, whether the individual is the subject of a record system maintained by the provider.

4.07: Storage and Transfer of Records

(1) Authority. Under M.G.L. c. 19B, § 15(b), each provider licensed or certified by the Department shall maintain and make available to the Department such statistical and diagnostic data as may be required by the Department. Under M.G.L. c. 123B, § 17, the Department is directed to keep records concerning persons served by providers and facilities under its supervision. 115 CMR 4.07 is promulgated pursuant to this authority.

(2) Maintenance of Individual Records. Providers of services operated, licensed, certified, or contracted by the Department shall maintain records concerning the individuals they serve for the periods stated in the Department's official retention and disposal schedule. Providers shall make the records available to the Department for archiving in accordance with such retention and disposal schedule. All individual records held by any provider subject to Department regulation shall be the property of the Department.

(3) Transfer of Records.

(a) If an individual will no longer be served by a facility, that facility shall deliver the last three years of the individual's record to the provider that will be serving the individual in the facility's place, if any. The facility shall then maintain the remainder of the individual's records in accordance with the Department's record retention and disposal schedule.

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(b) If an individual will no longer be served by a provider that is not a facility, that provider shall make the individual's records available to the Department, who shall deliver the last three years of the individual's record to the provider that will be serving the individual in place of the former provider, if any. The Department shall then maintain the remainder of the records in accordance with its retention and disposal schedule.

(c) If an individual will no longer be served by a particular provider, but no provider will be providing a similar service to the individual, then:

1. if the former provider is a facility or other Department-operated service or support, it shall maintain or archive the individual's records as directed by the facility director or area office director, as appropriate.

2. if the former provider is or was licensed, certified, or contracted by the Department, it shall make the individual's records available to the Department and the Department shall maintain or archive the records in accordance with its retention and disposal schedule;

(4) Microfilmed Records. Any provider may put an individual's records on microfilm provided that such records are easily accessible and can be readily provided to the Department and to the individual upon request.

REGULATORY AUTHORITY

115 CMR 4.00: M.G.L. c. 19B, §§ 14 and 15(b); c. 123B, §§ 2 and 17.

NON-TEXT PAGE